

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF**

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P/S

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA,

Appellee,

-against-

No. 74-1729

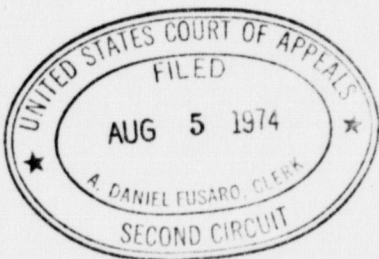
THOMAS COURTNEY COOK,

Defendant-Appellant.

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ON APPEAL FROM THE DISTRICT COURT FOR THE
NORTHERN DISTRICT OF NEW YORK

BRIEF FOR APPELLANT



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IN THE UNITED STATES COURT OF APPEALS
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BRIEF FOR APPELLANT

THOMAS COURTNEY COOK,

Defendant-Appellant.

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PRELIMINARY STATEMENT

This appeal seeks review of a conviction after a jury-waived trial before Chief Judge Foley of the Northern District of New York; neither Judge Foley's opinion denying defendant's motion to dismiss, nor his opinion upon conviction is reported.

ISSUES PRESENTED

1. Whether a Selective Service registrant, who is otherwise entitled to a I-S(C) student deferment, is deprived of that entitlement if he is issued an induction order during his summer vacation from school.

2. Whether a Mohawk Indian is entitled to exemption from liability under the Selective Service Act

by reason of treaties entered into between the United States and the Six Nations of the Iroquois Confederacy.

STATEMENT OF THE CASE

This Selective Service case arises from the alleged failure of the defendant, Thomas Cook, to report for induction into the Armed Forces of the United States, pursuant to an induction order directing him to so report on September 22, 1970. He was convicted, in a jury-waived trial before Chief Judge Foley, on a single-count indictment.

The facts, insofar as relevant to the defenses raised by Cook, are relatively simple; the defendant's two claims are that he was unlawfully denied a mandatory and non-discretionary student deferment of I-S, and that as a citizen of the Mohawk Indian Nation, he was not subject to induction.

Cook registered at the age of 18, in May, 1966; he then received a series of IV-D deferments as a divinity student, studying for the Catholic priesthood at Our Lady of Hope Seminary, Newburgh, New York. In August of 1968, he informed his local board that he had terminated his seminary study, and he was thereupon classified as I-A;

however, he shortly thereafter entered Richmond College of the City University of New York, at Staten Island, as a full-time undergraduate student, with an expected graduation date of June, 1970. On this basis, Cook was classified II-S by his board on October 8, 1968, and the II-S deferment was continued, substantially without interruption, until the summer of 1970.

On July 10, 1970 the local board wrote to the Registrar's Office at Richmond College, inquiring whether Cook had graduated as expected in June. On July 15, the board received from Cook a completed Current Information Questionnaire (SSS Form 127) in which he reported that he now expected to graduate in May of 1972. On the same day, the Executive Secretary of the local board placed in Cook's Selective Service file a Report of Information (SSS Form 119) stating that Cook continued to be a student at Richmond College; that because he had changed his major subject of study, he had not graduated in June of 1970; and that his expected graduation date was now June of 1972. Two days later, on July 17, 1970, the board received from the Registrar's Office of Richmond College a reply to its inquiry of July 10; the Registrar's letter stated that Cook continued to be a student at Richmond College, requiring

46 more credits to qualify for graduation.

On the basis of all of this information, the board reclassified Cook I-A on July 21, 1970. The following day the board mailed to him his notice of classification and an SSS Form LO-9; the latter informed Cook that although the board had determined that he did not qualify for a II-S student deferment, he might qualify for a I-S(C) classification. The LO-9 Form also stated that when Cook was reached for induction, if he qualified for I-S(C), the board would mail him a letter with his induction order informing him that the order would be cancelled and that he would be granted the I-S(C).

On August 24, 1970, the board mailed Cook an order to report for induction on September 22. Despite the advice communicated in the Form LO-9, the induction order was not cancelled, and he was not granted a I-S(C) classification.

On September 21, 1970, the board received a letter from Cook, in which he stated that he was by birth a North American Indian, a member of the Iroquois Tribe of St. Regis, at St. Regis, Quebec, a band of Indians within the Mohawk Nation, one of the Six Nations of Iroquois Confederacy. In the letter, he outlined to the board his belief

that as a citizen of the Mohawk Nation he was not a citizen of the United States, such as to be liable for military service. He also stated his belief that his travels into the United States for reasons of employment and education could not, because of his treaty rights, subject him to military service. He therefore requested that the induction order be cancelled, but the local board took no steps to comply with this request.

On the day after the board received Cook's letter, he failed to report for induction. However, he cannot be convicted for this failure to report, because he was wrongfully denied a deferment to which he was entitled, and because, by reason of his ancestry and citizenship, he was not liable to military service at all.

The issue of Cook's entitlement to a I-S(C) classification was raised in the court below by motion to dismiss prior to trial; the District Court, while acknowledging that the issue was far from clear, nevertheless held contrary to Cook's contentions, and ruled that where an induction order is issued during a student's summer vacation, he is not entitled to a I-S(C) deferment, which may be granted only when the order is issued during the "academic year".

At trial the defendant renewed his motions for dismissal or acquittal, both at the conclusion of the government case, and at the conclusion of trial. The District Court, nevertheless, chose to stand on its earlier decision on the I-S(C) issue; in addition, despite the substantial and uncontradicted evidence produced by Cook as to his Mohawk citizenship, the court below held itself to be bound by earlier decisions of this Court, and refused acquittal on this ground also. The defendant was convicted, and on May 20, 1974, was sentenced to a term of two years probation, conditioned on the performance of work in the interest of the national health, safety and welfare.

ARGUMENT

POINT I

THE LOCAL BOARD'S ACTION
IN FAILING TO CANCEL THE
DEFENDANT'S INDUCTION ORDER
AND RECLASSIFY HIM I-S(C) WAS
LAWLESS ACTION INVALIDATING
THE INDUCTION ORDER

The illegality of the defendant's induction order flows from the local board's willful failure to classify the defendant I-S(C) despite his clear entitlement

thereto as a result of his having received an order to report for induction while he was a full-time student at Richmond College of the City University of New York, in Staten Island.¹ Mr. Cook met all of the requirements for a I-S(C) deferment set forth in 32 C.F.R. § 1622.15 (b).²

1. I-S deferments were mandated by an amendment to the Military Selective Service Act of 1967, adding a new § 6(i)(2), 50 U.S.C. App. § 456(i)(2):

"Any person who while satisfactorily pursuing a full-time course of instruction at a college, university, or similar institution is ordered to report for induction under this title, shall, upon the fact being presented to the local board, be deferred (A) until the end of such academic year, or (B) until he ceases satisfactorily to pursue such course of instruction, whichever is the earlier: Provided, That any person who * * * hereafter is deferred under the provision of this subsection, shall not be further deferred by reason of pursuit of a course of instruction at a college, university, or similar institution of learning * * *."

2. 32 C.F.R. § 1622.15(b):

"(b) In Class I-S shall be placed any registrant who while satisfactorily pursuing a full-time course of instruction at a college, university or similar institution of learning and during his academic year at such institution is ordered to report for induction, except that no registrant shall be placed in Class I-S under the provisions of this paragraph

(1) who has previously been placed in Class I-S thereunder or:

The local board had in its possession all of the necessary information to establish the defendant's status as a full-time student at the time the induction order was issued, and was also aware that Mr. Cook had not received a baccalaureate degree and had never previously been granted a I-S classification. It is clear beyond peradventure that the I-S(C) deferment is mandated and not subject to local board discretion upon a finding that a registrant is qualified for I-S classification. Indeed, local board failure to grant a I-S(C) deferment has been characterized by this Court as blatantly lawless, thereby allowing affirmative court action seeking to enjoin the issuance of an induction

(2. con't.)

(2) who has been deferred as a student in Class II-S and has received his baccalaureate degree;

A registrant who is placed in Class I-S under the provision of this paragraph shall be retained in Class I-S;

(1) until the end of his academic year or;

(2) until he ceases satisfactorily to pursue such course of instruction, whichever is the earlier.

The date of the classification in Class I-S and the date of its termination shall be entered in the 'Remarks' column of the Classification Record (SSS Form 102) and be identified on that record as Class I-S(C)."

order. See, Marsano v. Laird, 412 F.2d 65 (2d Cir. 1969); Carey v. Local Board No. 2, 412 F.2d 71 (2d Cir. 1969).

The Court below held, however, that the local board's failure to grant the I-S(C) was proper, since the induction order was issued during Cook's summer vacation from school, and therefore not during an "academic year". It is respectfully submitted, however, that in this respect, the lower court's action is clearly erroneous. The only definition of "academic year" contained in Selective Service Regulations is set forth in the regulation which is applicable to II-S classification, and it defines academic year as "the 12 month period following the beginning of his course of study". 32 C.F.R. § 1622.25(b).³ Nothing in statute or regulation indicates that the term "academic year" is to be defined any differently for a I-S(C) classification.

This specific question was squarely presented and decided in the case of Walsh v. Local Board No. 10, Mount Vernon, New York, 305 F.Supp. 1274 (S.D.N.Y. 1969), which held:

"Defendant argues that petitioner is not entitled to a I-S(C) classification because he received his induction order during his summer vacation and not during an academic year. Unquestionably,

3. "In determining eligibility for deferment in Class II-S, a student's academic year shall include the 12 month period following the beginning of his course of study."

the regulations do provide that a I-S(C) classification will only be granted to students who receive an induction order during an academic year. 'Academic year' is defined in the regulations applicable to the II-S classification as 'the 12 month period following the beginning of his course of study'. Applying that definition to this case would entitle petitioner to a I-S(C) classification because he would have received his order of induction during his September 1968 to September 1969 academic year.

* * * *

"Neither the statute nor the regulations contain the slightest suggestion that 'academic year' is to be defined differently for a I-S(C) classification than for a II-S classification. Moreover, defendant's argument that I-S(C) is essentially a graduate deferment conflicts with the plain language of § 6(i)(2) which excludes graduate students from a I-S(C) deferment except those remaining few who had received II-S deferments prior to the 1967 amendment."
305 F.Supp. at 1278-1279.

Other Federal Court decisions have followed the holding in the Walsh case. See also, United States v. Rundle, 413 F.2d 329 (8th Cir. 1969); United States v. Wood, 329 F.Supp. 68 (D.N.H. 1971) (Bownes, J.); United States v. Rothfelder, 338 F.Supp. 1164 (W.D.Mich. 1972)

(Fox, Ch. J.). It is respectfully submitted that the interpretation of the term "academic year" set forth in Walsh, Rundle, Rothfelder and Wood, supra, is the proper one.

There is no alternative definition in the Selective Service statute or regulations, and as Judge Bownes stated in United States v. Wood, supra:

"This phrase 'academic year' usually means from September until June, a 9 month period. Despite the number of months actually involved it means the period of time necessary to complete one year's study. The summer vacation period is a hiatus in the academic year, not the end of it. To say that a year usually connotes 12 months is to labor the obvious."
329 F.Supp. at 71.

Within this Circuit, Walsh has been followed in Keibler v. Selective Service Local Board No. 170, ___ F.Supp. ___, 3 SSLR 3294 (N.D.N.Y. 1970) (Port, J.), in which it was held that where an induction order was mailed during the summer to a registrant who was not even scheduled to begin his first year of classes until the coming September, a I-S deferment was nevertheless mandated, as such important rights should not be permitted to turn on "the fact that Local Board No. 170 got to the mailbox with the

plaintiff's induction notice 9 days before he arrived on the Cornell campus".

Similarly, in the present case, defendant's liberty should not be made to rest on the outcome of such a race. It would have been simple indeed for the defendant to have filed a request for a personal appearance or an appeal in August of 1970, even though he had no grounds on which to contest his I-A classification, and the pendency of such procedural rights would have prevented the issuance of an induction order until Cook had entered his fall semester at Richmond College. Thus, the refusal to grant Cook a I-S deferment during the summer, if upheld by this Court, will be no more than a severe penalty for his not having harassed the Selective Service System with a meaningless appeal for the sole purpose of delay. Such a construction would hold, in essence, that a type of deferment had been established, which contained built into its very structure, a few-month hiatus of ineligibility - a hiatus which could be bridged by any knowledgeable, sophisticated registrant, fully informed of and able to exercise all of his procedural rights, but a hiatus which would guarantee induction for the less informed and less sophisticated.

The decision of the court below, however, is in direct conflict with all of this clear authority. While conceding that it was called upon to construe "an admittedly ambiguous regulation with an unfortunate omission of the precise meaning of this phrase", (A 41) the court below nevertheless went on to construe the regulation in a way most favorable to the Government. The first error in this analysis, it is respectfully submitted, is the erroneous premise from which it appears to proceed, in its repeated references to "the intent of Congress" and the choice of words which "Congress" might have made in drafting the regulation. The regulation was not drafted by Congress, however, but the scriveners of the Selective Service System, whose clarity of expression is perhaps best illustrated in the Supreme Court's decision in Mulloy v. United States, 398 U.S. 410 (1970), where the System's use of the words "may reopen" in 32 C.F.R. § 1625.2 was held to mean "shall reopen". To impute any meaning to the precise choice of words used by the Selective Service System's draftsmen is plainly a precarious exercise at best.

Indeed, in the statute itself, former 50 U.S.C. App. § 456(i)(2), Congress makes no reference whatever to the necessity that an induction order be received during a

registrant's academic year in order that he be qualified for a I-S(C). Rather, the statute by its terms requires only that a registrant be "satisfactorily pursuing a full-time course of instruction," a requirement which Cook plainly satisfied.

A further error, it is respectfully submitted, is the Court's construction of this "admittedly ambiguous" regulation in the Government's favor. It is an elementary rule of construction that where there is any reasonable doubt as to the meaning of the words used, that doubt must be resolved in a criminal defenant's favor and against the Government.

As early as 1917, it was held that in construing the Internal Revenue Code, "[i]n case of doubt [taxation statutes] are construed most strongly against the Government and in favor of the citizen". Gould v. Gould, 245 U.S. 151, 153 (1917); see also, White v. Aronson, 302 U.S. 16, 20 (1937); Cloister Printing Corp. v. United States, 100 F.2d 355 (2d Cir. 1939); State Farm Mutual Automobile Ins. Co. v. United States, 200 F.Supp. 324 (S.D.Ill. 1961). Regulations in all fields have been subjected to similar rules of construction; thus, in interpreting an Executive Order which was used by the Government to support the

dismissal of a government employee for national security reasons, the Supreme Court held:

"Moreover, whatever the practical reasons that may have dictated the awkward form of the order, its failure to state explicitly what was meant is the fault of the government. Any ambiguities should therefore be resolved against the government"
Cole v. Young, 351 U.S. 536, 556 (1956)

Indeed, if the standard of construction applied to regulations is any different from that applied to statutes, it is in the direction of greater favor to the defendant:

"Beginning at least with Aristotle, it has often been recognized that, if a legislature cannot foresee all possible particular circumstances to which legislation is to apply, it must therefore be reasonably interpreted to fill in gaps. But when the legislature delegates to an administrative official the authority by 'sub-legislation' to issue regulations to fill in these gaps, then the regulations, precisely because they particularize ought not be as generously interpreted as the statute. In fairness to the regulated, the provisions of the regulation should not be deemed to include what the administrator, exercising his delegated power might have covered but did not cover. True, in deciding what they do cover, we must not regard their literal terms merely, but must also give much weight to interpretive rulings which have been published and of which the regulated are thus on notice. But here there were no published rulings giving the construction for which the plaintiff contends."

Tobin v. Edward S. Wagner Co., 187
F.2d 977, 979 (2d Cir. 1951)
(emphasis supplied).

Unlike the "vagueness" doctrine, the rule of construing regulations favorably to the regulated does not rely upon the latter's need to know proscribed conduct. Thus, it does not matter that the regulation in question was directed toward the definition of a classification. In Gould, supra, the issue was whether alimony was taxable as income to the receiving wife; in Callen v. Westover, 116 F.Supp. 191 (S.D.Cal. 1953), it was whether a taxpayer's loss was deductible; in Cole, the definition of national security; and in Tobin, the extent of coverage of Department of Labor regulations concerning the definition of work done by an employee.

There is no reason for construing regulations promulgated by the Selective Service System any more generously than those of the Internal Revenue Service or the Department of Labor. Indeed, in view of the consequences to the registrant, the regulations should, if anything, be construed far more strictly against the Government. See, e.g., Walsh v. Local Board No. 10., Mount Vernon, New York, 305 F.Supp. 1274, 1279 (S.D.N.Y. 1969);

"At the very least, those entrusted with the awful power of conscripting the nation's young men into the armed forces in time of war or other military venture owe a duty of the most searching examination of the facts, scrupulous fairness, sensitive care, compassionate hearing, patient consideration, cautious action and deliberate and rational decision within the law. We afford no less to the worst criminal in our society."

Cf. Ex parte, Fabiani, 105 F.Supp. 139 (E.D. Penna. 1952); United States v. Graham, 108 F.Supp. 794, 796 (N.D.N.Y. 1952) ("Regulations must be construed in favor of registrants"). Surely, it is not asking too much of the government that before it may induct young men into the service, it carefully define the conditions under which they may be conscripted. The Selective Service System made no such attempt here, but drew a sloppily composed regulation, subject to all manner of conflicting interpretations. The regulation must be construed against the Government, and Cook must be held to have been entitled to the I-S(C) deferment and the cancellation of his induction order. Therefore, it is respectfully submitted, the decision of the court below must be reversed.

POINT II

DEFENDANT'S BIRTH AS A MOHAWK
INDIAN EXEMPTED HIM FROM
LIABILITY TO MILITARY SERVICE

As the record of trial clearly demonstrates, the defendant Thomas Cook was and is a Mohawk Indian, a citizen of one of the Six Nations of the Iroquois Confederacy. As such, by the terms of numerous treaties between the United States and the Six Nations, Cook could not be subjected to induction into the Armed Forces. The guarantees of these treaties, entered into both before and after the adoption of the Constitution of the United States, plainly exempt Cook from any liability for military service, and they can have been overridden only by clearly inconsistent provisions in a subsequent treaty or United States statute. There is, however, no such treaty or statute; neither § 601 of the Nationality Act of 1940, as re-enacted by the Immigration and Nationality Act of 1952, and now embodied in 8 U.S.C. § 1401(a), which conferred citizenship on the Indians, nor the Military Selective Service Act of 1967, which imposed on male citizens liability for conscription, evinces the requisite intention to override the treaties. The protections of the treaties must therefore remain effective.

Concededly, this Court has had occasion, over thirty years ago, to consider similar contentions; in Ex parte Green, 123 F.2d 862 (2d Cir. 1941), cert. den. sub nom. Green v. McLaren, 316 U.S. 668 (1942), similar arguments were presented and rejected.⁴ It is respectfully contended, however, that Green was wrongly decided, giving only superficial consideration to the central and critical issue in this case, and it must be reconsidered and overruled. The Green Court assumed arguendo, without deciding, that the terms of various treaties between the Six Nations and the United States, if still effective, would protect Green from induction; it correctly held that only a statute evincing a clear intention by Congress to do so could abrogate such treaty rights, and that " . . . [I]n light of the history of the dealings between the United States and Green's tribe, these statutes shall be construed most favorably to him". 123 F.2d at 863-864. Having thus held, however, the Court went on to find,

4. A number of other cases have since expressed similar holdings. All, however, do little more than recite the authority of Green, without further discussion; if, as defendant contends, Green was wrongly decided, none of these subsequent cases is of any more validity. Williams v. United States, 406 F.2d 704 (9th Cir. 1969); Albany v. United States, 152 F.2d 266 (6th Cir. 1945); United States v. Craig, 353 F.Supp. 121 (D.Minn. 1973); United States v. Neptune, 337 F.Supp. 1028 (D.Conn. 1972); United States v. Claus, 63 F.Supp. 433 (W.D.N.Y. 1944); Totus v. United States, 39 F.Supp. 7 (E.D.Wash. 1941).

by an almost casual application of the hoary doctrine of "Expressio unius est exclusio alterius", that the grant of citizenship to Indians, contained in 8 U.S.C. § 1401(a), was expressly "intended to impose all other obligations of citizenship", 123 F.2d at 864, including liability to military conscription.

Any more careful analysis of the relevant treaties and statutes, it is respectfully submitted, leads inexorably to the conclusion that Green was wrongly decided, and that the treaty provisions which protect the Iroquois from induction have not, in fact, been abrogated, by statute or otherwise.

At the outset, it is clear that the language, if not the very existence, of the treaties between the United States and the Iroquois, establish incontestably the exemption of the Iroquois from liability to conscription into the military of the United States. Thus, one of the very first treaties into which the United States entered⁵ after its birth was the Treaty of Fort Stanwix, of 1784, 7 Statutes at Large 315, with the Six Nations.

5. The Iroquois, even this early, already had a long history of treaty relations with the European settlers, dating at least to the signing of the Turowampum at Albany in the mid-seventeenth century.

By the terms of the treaty, it was agreed that

"The United States of America give peace to the Senekas [sic], Mohawks, Onondagas, Cayugas and receive them into their protection upon the following conditions"

The conditions stated were an exchange of prisoners and hostages, the affirmation of sole rights in the Indians to their lands, the establishment of a boundary and the delivery of certain goods to the Indians. The treaty expressly provided that the "Six Nations shall and do yield to the United States, all claims to the country west of the said boundary; and then they shall be secured in peaceful possession of the lands they inhabit east and north of the same"

Following the Treaty of Fort Stanwyx, in 1789, after the adoption of the Constitution, a further treaty was entered into at Fort Harmar, 7 Statutes at Large 33, between the United States, "and the sachems and warriors of the Six Nations". The purpose of the treaty was to renew and confirm the provisions of the 1784 treaty. Again, at "Konondaigua" (Canandaigua), in 1794, 7 Statutes at Large 741, a further treaty between the United States and the Six Nations was signed, by which the United States

expressly agreed in Article 1 that "Peace and friendship are hereby firmly established and shall be perpetual, between the United States and the Six Nations", and in Article 2:

"The United States acknowledge the lands reserved to the Oneida, Onondaga and Cayuga nations in their respective treaties with the State of New-York and called their reservations to be their property; and the United States will never claim the same, nor disturb them, or either of the Six Nations nor their Indian friends residing thereon and united with them, in the free use and enjoyment thereof"

Finally, in 1838, the Six Nations and the United States entered into the Treaty of Buffalo Creek, which provided in Article 4:

"Perpetual peace and friendship shall exist between the United States and the New York Indians; and the United States hereby guaranty to protect and defend them in the peaceable possession and enjoyment of their new homes, and hereby secure to them, in said country, the right to establish their own form of government, appoint their own officers, and administer their own laws; subject, however, to the legislation of the Congress of the United States, regulating trade and intercourse with the Indians."

It is abundantly clear on the face of all of

these treaties that they were entered into and were understood by both sides at the time to guaranty to the citizens of the Six Nations freedom from interference or encroachment. It is plain that what both sides desired, and what all of these solumn treaties established, was a clear definition of that which belonged to the Six Nations and that which belonged to the United States, and a guaranty that each, within its sphere, would be free of any form of regulation or interference by the other.

Indeed, the very making of these treaties is a recognition of the separate sovereignty of the Indian Nations, such that the United States could hardly have the power to conscript their citizens. In construing similar treaties with the Cherokees, by which the United States similarly agreed to "give peace" to the Indians, and receive them into its protection, and by which boundaries were mutually established, and prisoners exchanged, Chief Justice Marshall wrote, for the Supreme Court, in Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832):

"This relation was that of a nation claiming and receiving the protection of one more powerful, not that of individuals abandoning their national character, and submitting as subjects to the laws of a master."
31 U.S. at 555.

* * * *

"The Indian nations had always been considered as distinct, independent political communities, retaining their original natural rights, as the undisputed possessors of the soil from time immemorial The very term 'nation', so generally applied to them, means 'a people distinct from others'. The Constitution, by declaring treaties already made, as well as those to be made, to be the supreme law of the land, has adopted and sanctioned the previous treaties with the Indian nations, and consequently admits their rank among those powers who are capable of making treaties. The words 'treaty' and 'nation' are words of our own language, selected in our diplomatic and legislative proceedings, by ourselves, each having a definite and well understood meaning. We have applied them to the other nations of the earth. They are applied to all in the same sense." Id. at 559-560.

* * * *

" . . . [T]he settled doctrine of the law of nations is that a weaker power does not surrender its independence - its right to self-government, by associating with a stronger and taking its protection. A weak State in order to provide for its safety, may place itself under the protection of one more powerful without stripping itself of the right of government, and ceasing to be a State

"The Cherokee Nation, then, is a

distinct community, occupying its own territory, with boundaries accurately described"
Id. at 560-561.

The plain language of the treaties, thus, is a clear recognition of the separate nationhood of the Iroquois Nations, and an assurance that they shall be free of any interference or regulation in their internal affairs by the United States. Moreover, the promise to the Indians that the United States "receive them into their protection", is a further assurance that the Iroquois cannot be called upon to participate in foreign wars; it would be a strange notion of "protection" of the Indians by the United States which would compel the Indians to help protect the United States against Germans, Japanese and Viet Cong.

Nor is it in any way anomalous or unfair, for the Indians to claim such protection, while claiming that they have no obligation in turn to help defend the United States. First, by the express provisions of the Fort Stanwix Treaty, the conditions desired by the United States, in return for its protection, are clearly spelled out: exchange of prisoners, and cessions of land by the Iroquois. See, Vazquez v. Attorney General of the United States,

433 F.2d 516, 521 (D.C. Cir. 1970) ("It may well be that the Government today would not commit itself to such an undertaking, but dissatisfaction with a solemn engagement has not as yet been thought, in this country at any rate, to be an adequate basis for ignoring the commitment.").

Second, as Chief Justice Marshall observed in Worcester v. Georgia, there was cogent historical reason for the United States to desire to take the Indian nations into its sole protection, as had the British crown before the Revolution:

"Fierce and warlike in their character, they might be formidable enemies or effective friends. Instead of rousing their resentment by asserting claims to their lands, or to dominion over their persons, their alliance was sought by flattering professions, and purchased by rich presents. The English, the French, and the Spaniards, were equally competitors for their friendship and their aid. Not well acquainted with the exact meaning of words, nor supposing it to be material whether they were called the subjects, or the children of their father in Europe; lavish in professions of duty and affection in return for the rich presents they received; so long as their actual independence was untouched, and their right to self-government acknowledged, they were willing to profess dependence on the power which furnished supplies of which they were in absolute need, and restrained

dangerous intruders from entering their country; and this was probably the sense in which the term was understood by them.

"Certain it is, that our history furnishes no example, from the first settlement of our country, of any attempt on the part of the crown to interfere with the internal affairs of the Indians, farther than to keep out the agents of foreign powers, who as traders or otherwise, might seduce them into foreign alliances."
31 U.S. at 546-547.

Thus, the United States, in entering into treaties with the Iroquois, and guaranteeing their protection, was bargaining for something which it very much wanted - assurance that the Indians would not ally themselves with European powers.

Indeed, even if it can be said that there is any room for doubt or any ambiguity in these treaties, that doubt must be resolved in the Indians' favor; as the Supreme Court has repeatedly held, and reaffirmed as recently as last year, even where an Indian "treaty nowhere explicitly states" that Indians are to have the rights for which they contend, " . . . [T]he document is not to be read as an ordinary contract agreed upon by parties dealing at arm's length with equal bargaining positions".

McClanahan v. State Tax Comm'n. of Arizona, 411 U.S. 164, 174 (1973). The history of the United States' dealings with the Indians has

" . . . led this Court in interpreting Indian treaties to adopt the general rule that '[d]oubtful expressions are to be resolved in favor of the weak and defenseless people who are the wards of the nation, dependent upon its protection and good faith'."

Id., quoting with approval from Carpenter v. Shaw, 280 U.S. 363, 367 (1930)

See also, e.g., United States v. Shoshone Tribe, 304 U.S. 111, 116 (1935); Jones v. Meehan, 175 U.S. 1, 11 (1899); Worcester v. Georgia, supra.

Read in such a light, there can be little doubt that the numerous treaties between Cook's people and our own, if still effective, protect Cook from subjection to the draft. If there is one thing which it is plain that the Iroquois expected to obtain from the signing of these treaties, it is the right to be left alone; conscription to fight Asians is hardly consonant with any such expectation.

These protections can, of course, have been abrogated by Congress; it has long been settled that treaties, although the supreme law of the land, can nevertheless be repealed by subsequent statute. Head Money Cases,

112 U.S. 580 (1884); The Cherokee Tobacco, 78 U.S. (11 Wall.) 616 (1870). While there may, indeed, be room for doubt whether this power has always been used, as it ought to be, in a manner "consistent with perfect good faith towards the Indians", Lone Wolf v. United States, 187 U.S. 553, 566 (1903), it nevertheless exists, and if it has been exercised in this case, Cook has no claim to exemption.

Imputing to a statute the abrogation of a treaty, however, and particularly a treaty with the Indians, is a step which the courts will take only most reluctantly, and only if there is no construction which can avoid such abrogation.

First, it has long been held that the courts will be most reluctant to find an intention in Congress to repudiate the solemn obligation of any treaty.

"Aside from the duty imposed by the Constitution to respect treaty stipulations when they become the subject of judicial proceedings, the court cannot be unmindful of the fact, that the honor of the Government and people of the United States is involved in every inquiry whether rights secured by such stipulations shall be recognized and protected."

Chew Heong v. United States, 112 U.S. 536, 539 (1884).

Thus, "A treaty will not be deemed to have been abrogated

or modified by a later statute, unless such purpose on the part of Congress has been clearly expressed". Cook v. United States, 288 U.S. 102, 120 (1933). See also, Itzcovitz v. Selective Service Local Board No. 6, New York, 301 F.Supp. 168, 169 (S.D.N.Y. 1969), app. dismiss. 422 F.2d 828 (2d Cir. 1970). Repeal by implication is never favored, Johnson v. Browne, 205 U.S. 309, 321 (1927), and in cases of apparent conflict, effect must be given to both treaty and statute, if that can be done by any reasonable interpretation. United States v. Lee Yen Tai, 185 U.S. 213-221 (1902).

When dealing with the Indians, of course, repeal by implication of their treaty rights must be looked upon with still greater disfavor; for the same reasons that treaties with the Indians are construed in the Indians' favor, so must be statutes which may affect them. Menominee Tribe v. United States, 391 U.S. 404 (1968); Squire v. Capoeman, 351 U.S. 1 (1956); United States v. Celestine, 215 U.S. 278 (1909).

Neither the Nationality Act of 1940, nor the Military Selective Service Act of 1967, can properly be read, in light of these strong presumptions in the Indians' favor, to subject the Indians to induction.

The relevant provision of the Selective Service Act is contained in § 4(a), former 50 U.S.C. App. § 454(a):

"Except as otherwise provided in this title, every male citizen of the United States, and every male alien admitted for permanent residence [between certain age limits] shall be liable for training and service in the Armed Forces of the United States"

Plainly, there is nothing whatever on the face of the Act to indicate who shall be a "citizen" within its terms, or to indicate that Congress intended, by this general language, to repudiate treaties solemnly entered into by the United States, with a nation which it had cast down into a dependent status. Nor is there anything in the legislative history of this or any prior Selective Service Act, to indicate any awareness in Congress that it was repudiating the treaty rights of Indians; but only evidence of such a clear and explicit intention can suffice.

An analogous problem was presented in Itzcovitz v. Selective Service Local Board No. 6, New York, supra. In construing the similar provision of § 4(a) of the Selective Service Act of 1951, subjecting resident aliens to liability, seemingly without exception for those claiming

treaty rights to exemption, the Itzcovitz court held that even where the statute "appears to make every resident male alien liable for military service such a literal interpretation should be rejected", in the absence of anything in the legislative history or elsewhere to indicate Congressional intention to repudiate the treaties despite the "serious diplomatic implications of such a result" 301 F.Supp. at 181. See also, Ungo v. Beechie, 311 F.2d 905 (9th Cir.), cert. den. 373 U.S. 911 (1963); Schenkel v. Landon, 133 F.Supp. 305 (D.Mass. 1955). Similarly, it has been held that a dual national, of Argentine citizenship by birth, and United States citizenship by virtue of his parents' naturalization during his minority, did not, by virtue of such citizenship, lose the right to exemption accorded to Argentine nationals by an 1853 treaty. Vazquez v. United States, 433 F.2d. 516 (D.C. Cir. 1970).

See also, 42 Op. Atty. Gen. 28 (1968), considering the same issues presented in Itzcovitz, and reaching the same result:

"Having been duly ratified with the advice and consent of the Senate, and not having been set aside by subsequent legislation, the treaty provisions represent an independent source of law as fully as if they were separate sections of the Military Selective

Service Act of 1967 itself."

Plainly, nothing in the Selective Service Act even approaches the specificity required to repudiate a treaty; if such repudiation is to be found, it must be in the statute by which the Indians became citizens, the Nationality Act of 1940, of which the relevant provision is now contained in 8 U.S.C. § 1401(a):

"The following shall be nationals and citizens of the United States at birth:

* * * *

"(2) a person born in the United States to a member of an Indian . . . tribe: Provided, that the granting of citizenship under this subsection shall not in any manner impair or otherwise affect the right of such person to tribal or other property."

Almost identical language is found in the Act which sought, in 1924, to make citizens of the Indians,⁶

6. "Chap. 233 - An Act to authorize the Secretary of the Interior to issue certificates of citizenship to the Indians.

Be it enacted . . . , That all non-citizen Indians born within the territorial limits of the United States be, and they are hereby, declared to be citizens of the United States: Provided, that the granting of such citizenship shall not in any manner impair or otherwise affect the right of any Indian to tribal or other property."
43 Stat. 253, June 2, 1924.

and similar language is to be found in statutes as early as 1887.⁷ In construing the 1940 Act in Ex parte Green, 123 F.2d 862 (2d Cir. 1941), cert. den. sub nom. Green v. McClaren, 316 U.S. 668 (1942), this Court, reasoning from the maxim, "Expressio unius est exclusio alterius", held that the express protection of property rights in the 1940 Act necessarily implied that Congress intended to reserve no other rights, and to impose all other obligations of citizenship. Such a construction, it is respectfully submitted, is plainly erroneous, and plainly does not satisfy the overwhelming presumption against repeal of treaties by implication (see pp. 29,⁻³⁰ supra).

Moreover, the history of the provision protecting property rights clearly negates any intention by

7. 24 Stat. 388, Feb. 8, 1887, § 6:

"That every Indian born within the territorial limits of the United States who has voluntarily taken up within said limits his residence, separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges, and immunities of such citizen, whether said Indian has been or not, by birth or otherwise, a member of any tribe of Indians within the territorial limits of the United States, without in any manner impairing or otherwise affecting the rights of any such citizen to tribal or other property."

Congress thereby to impose other obligations of citizenship. As already noted, the language appears at least as early as the 1887 grant of citizenship (see, note 7, supra) to those Indians who would leave the reservation and abandon tribal ways. The earliest statutes, however, did not impose citizenship, but sought to induce Indians voluntarily to accept it. United States ex rel. Besaw v. Work, 6 F.2d 694 (D.C. Cir. 1925); Oaks v. United States, 172 F. 305 (8th Cir. 1909). Plainly, it is inconsistent with the policy of inducement either to interpret the clause to mean that other rights are surrendered, or to construe the meaning of protected property narrowly.

Thus, even assuming arguendo that Green was correct in holding that ^{only} property rights were protected, it is difficult to reconcile such protection with a holding that Indians are subject to induction. Indeed, the result of induction and active military service, and the concomitant risk of injury or death, have been recognized as sufficiently affecting property interests to meet the \$10,000 federal diversity jurisdiction requirement. Freedman v. Froehlke, 470 F.2d 1351 (1st Cir. 1972); Berk v. Laird, 429 F.2d 302 (2d Cir. 1970); Walsh v. Local Board No. 10, supra. Indeed, whether or not the rights affected can be

said to reach \$10,000 in value, it is undeniable that numerous property rights, including those property rights which are preserved to Cook by the treaties, be they the right to peaceful possession of his land, or use of tribal lands on the reservations, they will be adversely affected by induction.

Still a further reason that it is improper to read into the reservation of property rights, an intention to impose liability for induction, is that when the clause originated, in 1887, there simply was no conscription, and since the Revolution, the only time there had been a national conscription was the brief and unhappy draft experience of the Civil War; the imposing of liability to induction on Indians who become citizens cannot conceivably have been within the intent - or even the conception - of Congress.⁸

8. The sole argument offering even remotely conceivable support for a finding of Congressional intent to subject Indians to induction, in violation of their treaty rights, is the re-enactment of substantially the same language as to Indian citizenship, in the Immigration and Nationality Act of 1952, a decade after Green. But such inaction, so far from ratification, "frequently betokens unawareness, preoccupation, or paralysis. 'It is at best treacherous to find in Congressional silence alone the adoption of a controlling rule of law.' Girouard v. United States, 328 U.S. 61, 69 (1946)." Zuber v. Allen, 396 U.S. 168, 185, fn.21 (1969); see, also, e.g., Boys Markets, Inc. v. Retail Clerks Union, 398 U.S. 235 (1970); Woodward v. Rogers, 344 F.Supp. 974 (D.D.C. 1972), aff'd 486 F.2d 1317 (D.C. Cir. 1973).

Plainly, there is nothing in the statutes, or in the legislative history, to evince a Congressional intention to subject Indians to conscription, and surely there is nothing which rises to the clarity of expression which, it is clear, is required before Congress will be held to have repudiated a treaty. Nor is the special class of citizenship which thus results, limited in its burdens, at all novel or unusual. On the contrary, the doctrine that the citizenship status of the Indians is a special one, limited in both its rights and its responsibilities, is a long-accepted and familiar one; while Indians today are citizens of some sort,

" . . . [I]t is nonetheless still true, as it was in the last century, that '[t]he relation of the Indian tribes living within the borders of the United States . . . [is] an anomalous one and of a complex character They were, and always have been, regarded as having a semi-independent position when they preserved their tribal relations; not as States, not as nations, not as possessed of the full attributes of sovereignty, but as a separate people, with the power of regulating their internal and social relations, and thus far not brought under the laws of the Union or of the State within whose limits they resided.' United States v. Kagama, 118 U.S. [375], 381-382 [1886]."
McClanahan v. State Tax Comm'n. of Arizona, 411 U.S. 164, 173 (1973).

Thus, it has long been held that the mere grant of citizenship to the Indians, in and of itself, was not sufficient to render their status identical to that of all other citizens; all manner of special conditions remained,

" . . . '[I]t is contended that the allotment of the lands in severalty, and afterwards making the Indians citizens, necessarily had the effect to revoke the reservation It is clear that the allotment alone could not have this effect [citations], and citizenship can only have it if citizenship is inconsistent with the existence of a reservation. It is not necessarily so. Some of the restraints of a reservation may be inconsistent with the rights of citizens. The advantages of a reservation are not The Act of 1887, which confers citizenship, clearly, does not emancipate the Indians from all control, or abolish the reservations.'" United States v. Celestine, 215 U.S. 278, 287 (1909), quoting with approval from Bells v. Ross, 64 F. 417 (9th Cir. 1894).

Long after the establishment of Indian citizenship it continued to be recognized that the status of Indians was not like that of other citizens; they neither had full and complete United States citizenship, nor lost their Indian citizenship. Thus, the existence and jurisdiction of the tribal courts continued, Iron Crow v. Oglala Sioux Tribe of Pine Ridge Res., 259 F.2d 553 (8th Cir. 1956),

and even the Bill of Rights of the United States Constitution did not limit the powers of tribal courts and tribal governments, Barta v. Oglala Sioux Tribe of Pine Ridge Res., 259 F.2d 553 (8th Cir. 1956) cert. den. 358 U.S. 932 (1957), until specifically imposed by statute in 1968. 28 U.S.C. §§ 1301-1302.

The special citizenship status of the Indians is closely bound up with the protective wardship to which, it has been repeatedly held, the Indians continue to be subject. Board of Comm'rs. of County of Creek, State of Oklahoma v. Seber, 318 U.S. 705 (1943); Winton v. Amos, 255 U.S. 373 (1921); United States v. Nice, 241 U.S. 591 (1916); so strong is the notion of wardship status that it has even been held to support governmental restrictions on Indians' control of their property, which would, as to any other citizen, be violative of the Fifth Amendment. Crain v. First National Bank of Oregon, Portland, 324 F.2d 532 (9th Cir. 1963).

The wardship doctrine arises from the recognition, by the United States, of its responsibility for the sorry plight of the Indians today, and takes responsibility for promoting and protecting their health, safety, welfare, and property. Board of Comm'rs. v. Seber, supra; United

States v. Kagama, 118 U.S. 375 (1886). The continuation of wardship status after citizenship evidences clear recognition by Congress and the courts alike, that the Indians, though they be citizens, were still not prepared to take their place among other citizens, with all of the rights and responsibilities that would ordinarily attach. Exemption of the Indians from the burdens and hardships of compulsory military service would plainly be consistent with such a policy; subjecting them to conscription would not be.

Indeed, the limited nature of a statutorily imposed - and perhaps less-than-eagerly received - grant of citizenship has been explicitly recognized, in the Selective Service context, by the Court of Appeals for the District of Columbia Circuit. In Vazquez v. Attorney General of the United States, 433 F.2d 516 (D.C. Cir. 1970), the Court dealt with the claim to exemption of an Argentine citizen by birth, who asserted the protection of the 1853 Treaty of Friendship, Commerce, and Navigation between the United States and Argentina, 10 Statutes at Large 1005; Vazquez' United States citizenship derived from the naturalization of his parents, during his own minority, and the provisions of 8 U.S.C. § 1432(a). Whatever might be the power of Congress to breach the treaty and induct Vazquez,

the Court held, it would not find that power to have been exercised by the general and non-specific language of the statute. Recognizing the dual citizenship which Vazquez held, the Court concluded, "We do not hold that Section 321(a) is inoperative to confer United States citizenship upon appellant for any purpose whatsoever. We do hold that the United States citizenship with which it purported to clothe appellant is not predominant over his Argentine citizenship for the purposes of Article X of the 1853 Treaty." 433 F.2d at 522 (Footnote omitted).

Similarly, it is respectfully submitted, this Court should recognize the dual nationality of Cook: the Mohawk citizenship which is his by birth, and which he cherishes; and the limited, qualified, and constricted citizenship attributed to him by statute. The latter, it must be found, cannot override the treaty rights attaching to the former, and Cook cannot be thereby subjected to induction.

In sum, Cook is protected from conscription by numerous treaties which, especially if construed, as they must be, most favorably to him, free him from any obligation to compulsory military service. Nothing in the statute which makes Cook a citizen evidences any Congressional

intent to abrogate those treaty rights, and in the absence of express intent, those rights will be respected. Similarly, nothing in the Military Selective Service Act of 1967 affects his rights, and the latter Act has indeed been construed as in no wise limiting the similar treaty rights of aliens and of dual nationals; no less respect is due to the rights of the Indians.

Thus, no desire on the part of Congress can be shown to impose the burden of conscription on Cook, and in the absence of any such clear intent, the courts will not find treaties to be repealed by implication. Therefore, Cook was not subject to induction, and his conviction must be reversed.

CONCLUSION

For all of the reasons set forth above, the decision below must be reversed, and the appellant must be acquitted.

Dated: New York, New York
August 5, 1974

Respectfully submitted,

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Appendix A

Relevant Treaties

TREATY WITH THE SIX NATIONS, 1784.

Oct. 22, 1784.

7 Stat., 15.

Articles concluded at Fort Stanwix, on the twenty-second day of October, one thousand seven hundred and eighty-four, between Oliver Wolcott, Richard Butler, and Arthur Lee, Commissioners Plenipotentiary from the United States, in Congress assembled, on the one Part, and the Sachems and Warriors of the Six Nations, on the other.

The United States of America give peace to the Senecas, Mohawks, Onondagas and Cayugas, and receive them into their protection upon the following conditions:

ARTICLE I.

Six hostages shall be immediately delivered to the commissioners by the said nations, to remain in possession of the United States, till all the prisoners, white and black, which were taken by the said Senecas, Mohawks, Onondagas and Cayugas, or by any of them, in the late war, from among the people of the United States, shall be delivered up.

Hostages to be given till prisoners are delivered up.

ARTICLE II.

The Oneida and Tuscarora nations shall be secured in the possession of the lands on which they are settled.

Possession of lands secured.

ARTICLE III.

A line shall be drawn, beginning at the mouth of a creek about four miles east of Niagara, called Oyonwayca, or Johnston's Landing-Place, upon the lake named by the Indians Oswego, and by us Ontario: from thence southerly in a direction always four miles east of the carrying-path, between Lake Erie and Ontario, to the mouth of Tehoscoron or Buffalo Creek on Lake Erie: thence south to the north boundary of the state of Pennsylvania; thence west to the end of the said north boundary; thence south along the west boundary of the said state, to the river Ohio: the said line from the mouth of the Oyonwayca to the Ohio, shall be the western boundary of the lands of the Six Nations, so that the Six Nations shall and do yield to the United States, all claims to the country west of the said boundary, and then they shall be secured in the peaceful possession of the lands they inhabit east and north of the same, reserving only six miles square round the fort of Oswego, to the United States, for the support of the same.

Boundaries.

ARTICLE IV.

The Commissioners of the United States, in consideration of the present circumstances of the Six Nations, and in execution of the humane and liberal views of the United States upon the signing of the above articles, will order goods to be delivered to the said Six Nations for their use and comfort.

Goods given to the Indians.

Oliver Wolcott,	[L. s.]	Oneidas:	
Richard Butler,	[L. s.]	Otyadonenghti, his x mark,	[L. s.]
Arthur Lee,	[L. s.]	Dazaheari, his x mark,	[L. s.]
Mohawks:		Cayuga:	
Onogwendahonji, his x mark,	[L. s.]	Oraghgoanendagen, his x mark,	[L. s.]
Toughnatogon, his x mark,	[L. s.]	Tuscaroras:	
Onondagas:		Ononghsawenghti, his x mark,	[L. s.]
Oheadarishon, his x mark,	[L. s.]	Tharondawagon, his x mark,	[L. s.]
Kendarindgon, his x mark,	[L. s.]	Seneka Abeal:	[L. s.]
Senecas:		Kayenthoghke, his x mark,	[L. s.]
Tayagonendagighti, his x mark,	[L. s.]		
Tehonwaeaghrigagi, his x mark,	[L. s.]		

Witnesses:

Sam. Jo. Atlee,	James Dean,
Wm. Maclay,	Saml. Montgomery,
Fras. Johnston,	Derick Lane, captain,
Pennsylvania Commissioners.	John Mercer, lieutenant,
Aaron Hill,	William Pennington, lieutenant,
Alexander Campbell,	Mahlon Hord, ensign,
Saml. Kirkland, missionary,	Hugh Peebles.

TREATY WITH THE SIX NATIONS, 1789.

Articles of a treaty made at Fort Harmar, the ninth day of January, in the year of our Lord one thousand seven hundred and eighty-nine, between Arthur St. Clair, esquire, governor of the territory of the United States of America, north-west of the river Ohio, and commissioner plenipotentiary of the said United States, for removing all causes of controversy, regulating trade, and settling boundaries, between the Indian nations in the northern department and the said United States, of the one part, and the sachems and warriors of the Six Nations, of the other part:

Jan. 9. 1789.

7 Stat., 33.

ART. 1. WHEREAS the United States, in congress assembled, did, by their commissioners, Oliver Wolcott, Richard Butler, and Arthur Lee, esquires, duly appointed for that purpose, at a treaty held with the said Six Nations, viz: with the Mohawks, Oneidas, Onondagas, Tuscaroras, Cayugas, and Senekas, at fort Stanwix, on the twenty-second day of October, one thousand seven hundred and eighty-four, give peace to the said nations, and receive them into their friendship and protection: And whereas the said nations have now agreed to and with the said Arthur St. Clair, to renew and confirm all the engagements and stipulations entered into at the beforementioned treaty at fort Stanwix: and whereas it was then and there agreed between the United States of America and the said Six Nations, that a boundary line should be fixed between the lands of the said Six Nations and the territory of the said United States, which boundary line is as follows, viz: Beginning at the mouth of a creek, about four miles east of Niagara, called Ononwayea, or Johnston's Landing Place, upon the lake named by the Indians Oswego, and by us Ontario: from thence southerly, in a direction always four miles east of the carrying place, between lake Erie and lake Ontario, to the mouth of Tehoseroton, or Buffalo creek, upon lake Erie; thence south, to the northern boundary of the state of Pennsylvania; thence west, to the end of the said north boundary; thence south, along the west boundary of the said state to the river Ohio. The said line, from the mouth of Ononwayea to the Ohio, shall be the western boundary of the lands of the Six Nations, so that the Six Nations shall and do yield to the United States, all claim to the country west of the said boundary: and then they shall be secured in the possession of the lands they inhabit east, north, and south of the same, reserving only six miles square, round the fort of Oswego, for the support of the same. The said Six Nations, except the Mohawks, none of whom have attended at this time, for and in consideration of the peace then granted to them, the presents they then received, as well as in consideration of a quantity of goods, to the value of three thousand dollars, now delivered to them by the said Arthur St. Clair, the receipt whereof they do hereby acknowledge, do hereby renew and confirm the said boundary line in the words beforementioned, to the end that it may be and remain as a division line between the lands of the said Six Nations and the territory of the United States, forever. And the undersigned Indians, as well in their own names as in the name of their respective tribes and nations, their heirs and descendants, for the considerations beforementioned, do release, quit claim, relinquish, and cede, to the United States of America, all the lands west of the said boundary or division line, and between the said line and the strait, from the mouth of Ononwayea and Buffalo Creek, for them, the said United States of America, to have and to hold the same, in true and absolute propriety, forever.

Reference to the treaty of Fort Stanwix.

Renewal of engagements.

The Mohawks excepted.

Old boundary confirmed.

Lands west of said line ceded forever to United States.

Certain lands confirmed to the Six Nations, etc.

ART. 2. The United States of America confirm to the Six Nations, all the lands which they inhabit, lying east and north of the beforementioned boundary line, and relinquish and quit claim to the same and every part thereof, excepting only six miles square round the fort of Oswego, which six miles square round said fort is again reserved to the United States by these presents.

Lands of Oneidas and Tuscaroras confirmed to them as usual.
Peace and friendship renewed.

Mohawks allowed six months to assent.

ART. 3. The Oneida and Tuscarora nations, are also again secured and confirmed in the possession of their respective lands.

ART. 4. The United States of America renew and confirm the peace and friendship entered into with the Six Nations, (except the Mohawks), at the treaty beforementioned, held at fort Stanwix, declaring the same to be perpetual. And if the Mohawks shall, within six months, declare their assent to the same, they shall be considered as included.

Done at Fort Harmar, on the Muskingum, the day and year first above written.

In witness whereof, the parties have hereunto, interchangeably, set their hands and seals.

Ar. St. Clair,	[L. s.]	Owenewa, or Thrown in the Water,	[L. s.]
Cageaga, or Dogs Round the Fire,	[L. s.]	his x mark,	[L. s.]
Sawedowa, or The Blast,	[L. s.]	Gyantwaia, or Cornplanter, his x	[L. s.]
Kiondushowa, or Swimming Fish,	[L. s.]	mark,	[L. s.]
Oncahye, or Dancing Feather,	[L. s.]	Gyasota, or Big Cross, his x mark,	[L. s.]
Sohaeas, or Falling Mountain,	[L. s.]	Kannassee, or New Arrow,	[L. s.]
Otahsaka, or Broken Tomahawk,	[L. s.]	Achout, or Half Town,	[L. s.]
his x mark,	[L. s.]	Anachout, or The Wasp, his x mark,	[L. s.]
Tekahias, or Long Tree, his x mark,	[L. s.]	Chishekoa, or Wood Bug, his x	[L. s.]
Onecnsetee, or Loaded Man, his	[L. s.]	mark,	[L. s.]
x mark,	[L. s.]	Sessewa, or Big Bale of a Kettle,	[L. s.]
Kiahtulaho, or Snake,	[L. s.]	Selahowa, or Council Keeper,	[L. s.]
Aqueia, or Bandy Legs,	[L. s.]	Tewanias, or Broken Twig,	[L. s.]
Kiandogewa, or Big Tree, his x	[L. s.]	Sonachshowa, or Full Moon,	[L. s.]
mark,	[L. s.]	Cachunwasse, or Twenty Canoes,	[L. s.]
		Hickonquash, or Tearing Asunder,	[L. s.]

In presence of—

Jos. Harmar, lieutenant-colonel commanding First U. S. Regiment and brigadier-general by brevet,
Richard Butler,
Jno. Gibson,
Will. McCurdy, captain.
Ed. Denny, ensign First U. S. Regiment.
A. Hartshorn, ensign,
Robt. Thompson, ensign, First U. S. Regiment,
Fran. Leile, ensign,
Joseph Nicholas.

SEPARATE ARTICLE.

Should a robbery or murder be committed by an Indian or Indians of the Six Nations, upon the citizens or subjects of the United States, or by the citizens or subjects of the United States, or any of them, upon any of the Indians of the said nations, the parties accused of the same shall be tried, and if found guilty, be punished according to the laws of the state, or of the territory of the United States, as the case may be, where the same was committed. And should any horses be stolen, either by the Indians of the said nations, from the citizens or subjects of the United States, or any of them, or by any of the said citizens or subjects from any of the said Indians, they may be reclaimed into whose possession soever they may have come; and, upon due proof, shall be restored, any sale in open market notwithstanding; and the persons convicted shall be punished with the utmost severity the laws will admit. And the said nations engage to deliver the persons that may be accused, of their nations, of either of the beforementioned crimes, at the nearest post of the United States, if the crime was committed within the territory of the United States; or to the civil authority of the state, if it shall have happened within any of the United States.

Robberies and murders to be punished according to the law, etc.

Stolen horses to be restored.

Offenders to be delivered up.

Ar. St. Clair.

TREATY WITH THE SIX NATIONS, 1794.

Nov. 11, 1794.

7 Stat. 44.
Proclamation, Jan.
21, 1795.

A Treaty between the United States of America, and the Tribes of Indians called the Six Nations.

The President of the United States having determined to hold a conference with the Six Nations of Indians, for the purpose of removing from their minds all causes of complaint, and establishing a firm and permanent friendship with them: and Timothy Pickering being appointed sole agent for that purpose; and the agent having met and conferred with the Sachems, Chiefs and Warriors of the Six Nations, in a general council: Now, in order to accomplish the good design of this conference, the parties have agreed on the following articles; which, when ratified by the President, with the advice and consent of the Senate of the United States, shall be binding on them and the Six Nations.

ARTICLE I.

Peace and friendship are hereby firmly established, and shall be perpetual, between the United States and the Six Nations.

Peace and friendship perpetual.

ARTICLE II.

The United States acknowledge the lands reserved to the Oneida, Onondaga and Cayuga Nations, in their respective treaties with the state of New-York, and called their reservations, to be their property; and the United States will never claim the same, nor disturb them or either of the Six Nations, nor their Indian friends residing thereon and united with them, in the free use and enjoyment thereof: but the said reservations shall remain theirs, until they choose to sell the same to the people of the United States, who have the right to purchase.

Certain lands secured to Indians.

ARTICLE III.

The land of the Seneka nation is bounded as follows: Beginning on Lake Ontario, at the north-west corner of the land they sold to Oliver Phelps, the line runs westerly along the lake, as far as O-yong-wong-yeh Creek, at Johnson's Landing-place, about four miles eastward from the fort of Niagara: then southerly up that creek to its main fork, then straight to the main fork of Stedman's creek, which empties into the river Niagara, above fort Schlosser, and then onward, from that fork, continuing the same straight course, to that river: (this line, from the mouth of O-yong-wong-yeh Creek to the river Niagara, above fort Schlosser, being the eastern boundary of a strip of land, extending from the same line to Niagara river, which the Seneka nation ceded to the King of Great-Britain, at a treaty held about thirty years ago, with Sir William Johnson;) then the line runs along the river Niagara to Lake Erie; then along Lake Erie to the north-east corner of a triangular piece of land which the United States conveyed to the state of Pennsylvania, as by the President's patent, dated the third day of March, 1792; then due south to the northern boundary of that state; then due east to the south-west corner of the land sold by the Seneka nation to Oliver Phelps; and then north and northerly, along Phelps's line, to the place of beginning on Lake Ontario. Now, the United States acknowledge all the land within the aforementioned boundaries, to be the property of the Seneka nation; and the United States will never claim the same, nor disturb the Seneka nation, nor any of the Six Nations, or of their Indian friends residing thereon and united with them, in the free use and enjoyment thereof: but it shall remain theirs, until they choose to sell the same to the people of the United States, who have the right to purchase.

Boundary of lands belonging to the Seneca nation.

ARTICLE IV.

The United States having thus described and acknowledged what lands belong to the Oneidas, Onondagas, Cayugas and Senecas, and engaged never to claim the same, nor to disturb them, or any of the Six Nations, or their Indian friends residing thereon and united with them, in the free use and enjoyment thereof: Now, the Six Nations, and each of them, hereby engage that they will never claim any other lands within the boundaries of the United States; nor ever disturb the people of the United States in the free use and enjoyment thereof.

Six Nations never to claim other lands in the United States.

ARTICLE V.

Right to make and use a road granted.

The Seneca nation, all others of the Six Nations concurring, cede to the United States the right of making a wagon road from Fort Schlosser to Lake Erie, as far south as Buffalo Creek; and the people of the United States shall have the free and undisturbed use of this road, for the purposes of travelling and transportation. And the Six Nations, and each of them, will forever allow to the people of the United States, a free passage through their lands, and the free use of the harbors and rivers adjoining and within their respective tracts of land, for the passing and securing of vessels and boats, and liberty to land their cargoes where necessary for their safety.

ARTICLE VI.

Present and annuity.

In consideration of the peace and friendship hereby established, and of the engagements entered into by the Six Nations; and because the United States desire, with humanity and kindness, to contribute to their comfortable support; and to render the peace and friendship hereby established, strong and perpetual; the United States now deliver to the Six Nations, and the Indians of the other nations residing among and united with them, a quantity of goods of the value of ten thousand dollars. And for the same considerations, and with a view to promote the future welfare of the Six Nations, and of their Indian friends aforesaid, the United States will add the sum of three thousand dollars to the one thousand five hundred dollars, heretofore allowed them by an article ratified by the President, on the twenty-third day of April, 1792;^a making in the whole, four thousand five hundred dollars; which shall be expended yearly forever, in purchasing clothing, domestic animals, implements of husbandry, and other utensils suited to their circumstances, and in compensating useful artificers, who shall reside with or near them, and be employed for their benefit. The immediate application of the whole annual allowance now stipulated, to be made by the superintendent appointed by the President for the affairs of the Six Nations, and their Indian friends aforesaid.

ARTICLE VII.

Retaliation restrained.

Lest the firm peace and friendship now established should be interrupted by the misconduct of individuals, the United States and Six Nations agree, that for injuries done by individuals on either side, no private revenge or retaliation shall take place; but, instead thereof, complaint shall be made by the party injured, to the other: By the Six Nations or any of them, to the President of the United States, or the Superintendent by him appointed; and by the Superintendent, or other person appointed by the President, to the principal chiefs of the Six Nations, or of the nation to which the offender belongs; and such prudent measures shall then be pursued as shall be necessary to preserve our peace and friendship unbroken; until the legislature (or great council) of the United States shall make other equitable provision for the purpose.

NOTE. It is clearly understood by the parties to this treaty, that the annuity stipulated in the sixth article, is to be applied to the benefit of such of the Six Nations and of their Indian friends united with them as aforesaid, as do or shall reside within the boundaries of the United States: For the United States do not interfere with nations, tribes or families, of Indians elsewhere resident.

"It appears that this treaty was never ratified by the Senate. See American State Papers, Indian Affairs, vol. 1, p. 232. Also, post 1927.

In witness whereof, the said Timothy Pickering, and the sachems and war chiefs of the said Six Nations, have hereto set their hands and seals.

Done at Konondaigua, in the State of New York, the eleventh day of November, in the year one thousand seven hundred and ninety-four.

Timothy Pickering,	[L. S.]	Tauhoondos, his x mark, or Open	[L. S.]
Onoyeahnee, his x mark,	[L. S.]	the Way,	[L. S.]
Konneatorteeooh, his x mark, or	[L. S.]	Twaukewasha, his x mark,	[L. S.]
Handsome Lake,	[L. S.]	Seguidongquee, his x mark, alias	[L. S.]
Tokenhyoubau, his x mark, alias	[L. S.]	Little Beard,	[L. S.]
Captain Key,	[L. S.]	Kodjeote, his x mark, or Hah	[L. S.]
Ones-hauee, his x mark,	[L. S.]	Town,	[L. S.]
Hendrick Aupaunut,	[L. S.]	Kenjauaugus, his x mark, or	[L. S.]
David Neesoonhuk, his x mark,	[L. S.]	Stinking Fish,	[L. S.]
Kawatsoyh, alias Nicholas Kusik,	[L. S.]	Soonohquaukan, his x mark,	[L. S.]
Sohhonteequent, his x mark,	[L. S.]	Twenniyana, his x mark,	[L. S.]
Oodluhsait, his x mark,	[L. S.]	Jishkaaga, his x mark, or Green	[L. S.]
Konoohqung, his x mark,	[L. S.]	Grasshopper, alias Little Billy,	[L. S.]
Tossongaulolus, his x mark,	[L. S.]	Tuggehshotta, his x mark,	[L. S.]
John Skenendoa, his x mark,	[L. S.]	Tehongyagauna, his x mark,	[L. S.]
Onetorteeooh, his x mark,	[L. S.]	Tehongyoowush, his x mark,	[L. S.]
Kussauwatau, his x mark,	[L. S.]	Komneyoowesot, his x mark,	[L. S.]
Eyootenyootanook, his x mark,	[L. S.]	Ticohquottakauna, his x mark, or	[L. S.]
Kohnycaugong, his x mark, alias	[L. S.]	Woods on Fire,	[L. S.]
Jake Stroud,	[L. S.]	Taoundauleesh, his x mark,	[L. S.]
Shagnies, his x mark,	[L. S.]	Honayawus, his x mark, alias	[L. S.]
Teeroos, his x mark, alias Captain	[L. S.]	Farmer's Brother,	[L. S.]
Prantup,	[L. S.]	Soggoyawauthau, his x mark,	[L. S.]
Sooshaowau, his x mark,	[L. S.]	alias Red Jacket,	[L. S.]
Henry Young Brant, his x mark,	[L. S.]	Konyootiayoo, his x mark,	[L. S.]
Senhyoowauna, his x mark, or Big	[L. S.]	Sauhtakaongyees, his x mark, or	[L. S.]
Sky,	[L. S.]	Two Skies of a length,	[L. S.]
Onaahhah, his x mark,	[L. S.]	Omnashattakau, his x mark,	[L. S.]
Hotoshalenh, his x mark,	[L. S.]	Kaungyanchquee, his x mark,	[L. S.]
Kaukondanaiya, his x mark,	[L. S.]	Sooyoowan, his x mark,	[L. S.]
Nondiyauka, his x mark,	[L. S.]	Kaujeagaonh, his x mark, or Heap	[L. S.]
Kossishitowau, his x mark,	[L. S.]	of Dogs,	[L. S.]
Oojaugenta, his x mark, or Fish	[L. S.]	Soonohshoowau, his x mark,	[L. S.]
Carrier,	[L. S.]	Thaoowaunias, his x mark,	[L. S.]
Toheonggo, his x mark,	[L. S.]	Soonongjoowau, his x mark,	[L. S.]
Ootaguasso, his x mark,	[L. S.]	Kiantwhauka, his x mark, alias	[L. S.]
Joonondauwaonch, his x mark,	[L. S.]	Cornplanter,	[L. S.]
Kiyauhaonh, his x mark,	[L. S.]	Kaunehshonggoo, his x mark,	[L. S.]
Ootaujeaugenh, his x mark, or	[L. S.]		
Broken Axe,	[L. S.]		

Witnesses:

Israel Chapin.	Israel Chapin, jr.
William Shepard, jr.	Horatio Jones,
James Smedley.	Joseph Smith,
John Wickham.	Jasper Parish,
Augustus Porter.	Interpreters.
James K. Garnsey.	Henry Abecle.
William Ewing.	

TREATY WITH THE NEW YORK INDIANS, 1838.

Jan. 15, 1838.

7 Stat., 550.
Proclamation, Apr.
4, 1840.

Articles of a treaty made and concluded at Buffalo Creek in the State of New York, the fifteenth day of January in the year of our Lord one thousand eight hundred and thirty-eight, by Ransom H. Gillet, a commissioner on the part of the United States, and the chiefs, head men and warriors of the several tribes of New York Indians assembled in council witnesseth:

Preamble.

WHEREAS, the six nations of New York Indians not long after the close of the war of the Revolution, became convinced from the rapid increase of the white settlements around, that the time was not far distant when their true interest must lead them to seek a new home among their red brethren in the West: And whereas this subject was agitated in a general council of the Six nations as early as 1810, and resulted in sending a memorial to the President of the United States, inquiring whether the Government would consent to their leaving their habitations and their removing into the neighborhood of their western brethren, and if they could procure a home there, by gift or purchase, whether the Government would acknowledge their title to the lands so obtained in the same manner it had acknowledged it in those from whom they might receive it; and further, whether the existing treaties would, in such a case remain in full force, and their annuities be paid as heretofore: And whereas, with the approbation of the President of the United States, purchases were made by the New York Indians from the Menomonic and Winnebago Indians of certain lands at Green Bay in the Territory of Wisconsin, which after much difficulty and contention with those Indians concerning the extent of that purchase, the whole subject was finally settled by a treaty between the United States and the Menomonic Indians, concluded in February, 1831, to which the New York Indians gave their assent on the seventeenth day of October 1832: And whereas, by the provisions of that treaty, five hundred thousand acres of land are secured to the New York Indians of the Six Nations and the St. Regis tribe, as a future home, on condition that they all remove to the same, within three years, or such reasonable time as the President should prescribe: And whereas, the President is satisfied that various considerations have prevented those still residing in New York from removing to Green Bay, and among other reasons, that many who were in favour of emigration, preferred to remove at once to the Indian territory, which they were fully persuaded was the only permanent and peaceful home for all the Indians. And they therefore applied to the President to take their Green Bay lands, and provide them a new home among their brethren in the Indian territory. And whereas, the President being anxious to promote the peace, prosperity and happiness of his red children, and being determined to carry out the humane policy of the Government in removing the Indians from the east to the west of the Mississippi, within the Indian territory, by bringing them to see and feel, by his justice and liberality, that it is their true policy and for their interest to do so without delay.

Therefore, taking into consideration the foregoing premises, the following articles of a treaty are entered into between the United States of America and the several tribes of the New York Indians, the names of whose chiefs, head men and warriors are hereto subscribed, and those who may hereafter give their assent to this treaty in writing, within such time as the President shall appoint.

GENERAL PROVISIONS.

ARTICLE 1. The several tribes of New York Indians, the names of whose chiefs, head men, warriors and representatives are hereunto annexed, in consideration of the premises above recited, and the covenants hereinafter contained, to be performed on the part of the United States, hereby cede and relinquish to the United States all their right, title and interest to the lands secured to them at Green Bay by the Menomonic treaty of 1831, excepting the following tract, on which a part of the New York Indians now reside: beginning at the southwest-erly corner of the French grants at Green Bay, and running thence southwardly to a point on a line to be run from the Little Cocaclin, parallel to a line of the French grants and six miles from Fox River; from thence on said parallel line, northwesterly six miles; from thence eastwardly to a point on the northeast line of the Indian lands, and being at right angles to the same.

Indians relinquish
their right to lands at
Green Bay.

United States set
apart other lands for
Indians.

ARTICLE 2. In consideration of the above cession and relinquish-ment, on the part of the tribes of the New York Indians, and in order to manifest the deep interest of the United States in the future peace and prosperity of the New York Indians, the United States agree to set apart the following tract of country, situated directly west of the State of Missouri, as a permanent home for all the New York Indians, now residing in the State of New York, or in Wisconsin, or elsewhere in the United States, who have no permanent homes, which said coun-try is described as follows, to wit: Beginning on the west line of the State of Missouri, at the northeast corner of the Cherokee tract, and running thence north along the west line of the State of Missouri twenty-seven miles to the southerly line of the Miami lands; thence west so far as shall be necessary, by running a line at right angles, and parallel to the west line aforesaid, to the Osage lands, and thence easterly along the Osage and Cherokee lands to the place of beginning to include one million eight hundred and twenty-four thousand acres of land, being three hundred and twenty acres for each soul of said Indians as their numbers are at present computed. To have and to hold the same in fee simple to the said tribes or nations of Indians, by patent from the President of the United States, issued in conformity with the provisions of the third section of the act, entitled "An act to provide for an exchange of lands, with the Indians residing in any of the States or Territories, and for their removal west of the Mississippi," approved on the 28th day of May, 1830, with full power and authority in the said Indians to divide said lands among the different tribes, nations, or bands, in severalty, with the right to sell and convey to and from each other, under such laws and regulations as may be adopted by the respective tribes, acting by themselves, or by a general council of the said New York Indians, acting for all the tribes collec-tively. It is understood and agreed that the above described country is intended as a future home for the following tribes, to wit: The Senecas, Onondagas, Cayugas, Tuscaroras, Oneidas, St. Regis, Stock-bridges, Munsees, and Brothertowns residing in the State of New York, and the same is to be divided equally among them, according to their respective numbers, as mentioned in a schedule hereunto annexed.

1830, ch. 148.

Tribes that do not
agree to remove, etc.,
to forfeit all interest
in said lands.

Peace and friend-
ship.

ARTICLE 3. It is further agreed that such of the tribes of the New York Indians as do not accept and agree to remove to the country set apart for their new homes within five years, or such other time as the President may, from time to time, appoint, shall forfeit all interest in the lands so set apart, to the United States.

ARTICLE 4. Perpetual peace and friendship shall exist between the United States and the New York Indians; and the United States hereby guaranty to protect and defend them in the peaceable possession and enjoyment of their new homes, and hereby secure to them, in said country, the right to establish their own form of government, appoint their own officers, and administer their own laws; subject, however, to

the legislation of the Congress of the United States, regulating trade and intercourse with the Indians. The lands secured to them by patent under this treaty shall never be included in any State or Territory of this Union. The said Indians shall also be entitled, in all respects, to the same political and civil rights and privileges, that are granted and secured by the United States to any of the several tribes of emigrant Indians settled in the Indian Territory.

Land set apart for the Oneidas.

ARTICLE 5. The Oneidas are to have their lands in the Indian Territory, in the tract set apart for the New York Indians, adjoining the Osage tract, and that hereinafter set apart for the Senecas; and the same shall be so laid off as to secure them a sufficient quantity of timber for their use. Those tribes, whose lands are not specially designated in this treaty, are to have such as shall be set apart by the President.

ARTICLE 6. It is further agreed that the United States will pay to those who remove west, at their new homes, all such annuities, as shall properly belong to them. The schedules herunto annexed shall be deemed and taken as a part of this treaty.

Annuities, where to be paid.

ARTICLE 7. It is expressly understood and agreed, that this treaty must be approved by the President and ratified and confirmed by the Senate of the United States, before it shall be binding upon the parties to it. It is further expressly understood and agreed that the rejection, by the President and Senate, of the provisions thereof, applicable to one tribe, or distinct branch of a tribe, shall not be construed to invalidate as to others, but as to them it shall be binding, and remain in full force and effect.

Treaty binding when ratified.

ARTICLE 8. It is stipulated and agreed that the accounts of the Commissioner, and expenses incurred by him in holding a council with the New York Indians, and concluding treaties at Green Bay and Duck Creek, in Wisconsin, and in the State of New York, in 1836, and those for the exploring party of the New York Indians, in 1837, and also the expenses of the present treaty, shall be allowed and settled according to former precedents.

The accounts of the commissioner, etc., how to be paid.

SPECIAL PROVISIONS FOR THE ST. REGIS.

ARTICLE 9. It is agreed with the American party of the St. Regis Indians, that the United States will pay to the said tribe, on their removal west, or at such time as the President shall appoint, the sum of five thousand dollars, as a remuneration for monies laid out by the said tribe, and for services rendered by their chiefs and agents in securing the title to the Green Bay lands, and in removal to the same, the same to be apportioned out to the several claimants by the chiefs of the said party and a United States' Commissioner, as may be deemed by them equitable and just. It is further agreed, that the following reservation of land shall be made to the Rev. Eleazor Williams, of said tribe, which he claims in his own right, and in that of his wife, which he is to hold in fee simple, by patent from the President, with full power and authority to sell and dispose of the same, to wit: beginning at a point in the west bank of Fox River thirteen chains above the old milldam at the rapids of the Little Kockalin; thence north fifty-two degrees and thirty minutes west, two hundred and forty chains; thence north thirty-seven degrees and thirty minutes east, two hundred chains, thence south fifty-two degrees and thirty minutes east, two hundred and forty chains to the bank of Fox river; thence up along the bank of Fox river to the place of beginning.

Payment to St. Regis Indians on their removal.

SPECIAL PROVISIONS FOR THE SENECA.

ARTICLE 10. It is agreed with the Senecas that they shall have for themselves and their friends, the Cayugas and Onondagas, residing among them, the easterly part of the tract set apart for the New York Indians, and to extend so far west, as to include one half-section (three hundred and twenty acres) of land for each soul of the Senecas, Cayugas and Onandagas, residing among them; and if, on removing west, they find there is not sufficient timber on this tract for their use, then the President shall add thereto timber land sufficient for their accommodation, and they agree to remove; to remove from the State of New York to their new homes within five years, and to continue to reside there. And whereas at the making of this treaty, Thomas L. Ogden and Joseph Fellows the assignees of the State of Massachusetts, have purchased of the Seneca nation of Indians, in the presence and with the approbation of the United States Commissioner, appointed with the United States, one to remain with the State of Massachusetts, one to remain with the Tuscarora nation of Indians and one to remain with the said Thomas Ludlow Ogden and Joseph Fellows, interchangeably set their hands and seals, the day and year first above written.

Land set apart for the Seneca, Cayuga, and Onondaga.

Money due to the Seneca by Massachusetts to be paid to United States, etc.

Nicholas Cusick,
William Chew,
William Mountpleasant,
John Fox,
James Cusick,

John Patterson,
Samuel Jacobs,
James Anthony,
Peter Elm,
Daniel Peter.

Sealed and delivered in presence of—

James Stryker.
R. H. Gillet.
Charles H. Allen.
J. F. Schermerhorn.
Nathaniel T. Strong, U. S. interpreter.
H. B. Potter.
Orlando Allen.

(To the Indian names are subjoined a mark and seal.)

At the abovementioned treaty, held in my presence, as superintendent on the part of the Commonwealth of Massachusetts, and this day concluded, the foregoing instrument was agreed to by the contracting parties therein named, and was in my presence executed by them; and being approved by me, I do hereby certify and declare such my approbation thereof.

Witness my hand and seal, at Buffalo Creek, this 15th day of January, in the year 1838.

J. Trowbridge, Superintendent.

I have attended a treaty of the Tuscarora nation of Indians, held at Buffalo Creek, in the county of Erie in the State of New York, on the fifteenth day of January in the year of our Lord one thousand eight hundred and thirty-eight, when the within instrument was duly executed in my presence, by the sachems, chiefs, and warriors of the said nation, being fairly and properly understood and transacted by all the parties of Indians concerned and declared to be done to their full satisfaction. I do therefore certify and approve the same.

R. H. Gillet, Commissioner.

Feb. 13, 1838.
7 Stat., 561.

Supplemental article to the treaty concluded at Buffalo Creek, in the State of New York, on the 15th of January 1838, concluded between Ransom H. Gillet, commissioner on the part of the United States, and chiefs and head men of the St. Regis Indians, concluded on the 13th day of February 1838.

Supplemental article to the treaty concluded at Buffalo Creek in the State of New York, dated January 15 1838.

Assent of the St.
Regis Indians to the
treaty.

The undersigned chiefs and head men of the St. Regis Indians residing in the State of New York having heard a copy of said treaty read by Ransom H. Gillet, the commissioner who concluded that treaty on the part of the United States, and he having fully and publicly explained the same, and believing the provisions of the said treaty to be very liberal on the part of the United States and calculated to be highly beneficial to the New York Indians, including the St. Regis, who are embraced in its provisions do hereby assent to every part of the said treaty and approve the same. And it is further agreed, that any of the St. Regis Indians who wish to do so, shall be at liberty to remove to the said country at any time hereafter within the time specified in this treaty, but under it the Government shall not compel them to remove. The United States will, within one year after the ratification of this treaty, pay over to the American party of said Indians one thousand dollars, part of the sum of five thousand dollars mentioned in the special provisions for the St. Regis Indians, any thing in the article contained to the contrary notwithstanding.

\$1,000 to be paid to
them within one year
after the ratification
of this treaty.

Done at the council house at St. Regis, this thirteenth day of February in the year of our Lord one thousand eight hundred and thirty-eight. Witness our hands and seals.

R. H. Gillet, Commissioner.

Lover-taie-enye,
Louis-taio-rorio-te,
Michael Gaveault,
Lose-sori-sosane,
Louis-tioonsate,
Jok-ta-nen-shi-sa,
Ernois-e-gana-saien-to,
Tomos-tataste,
Tier-te-gonotas-en,
Tier-sokois-ni-saks,
Sa-satis-otsi-tsia-ta-gen,

Tier-sgane-kor-hapse-e,
Ennios-anas-ota-ka,
Louis-te-ganota-to-ro,
Wise-atia-taronne,
Tomas-outa-gosa,
Sose-te-gaomshke,
Louis-orisake-wha,
Sosatis-atis-tsiaks,
Tier-anasaken-rat,
Louis-tar-oria-keshon,
Jasen-karato-on.

The foregoing was executed in our presence—

A. K. Williams, Agent on the part of New York for St. Regis Indians.
W. L. Gray, Interpreter.
Owen C. Donnelly.
Say Saree.

(To the Indian names are subjoined a mark and seal.)

We the undersigned chiefs of the Seneca tribe of New York Indians, residing in the State of New York, do hereby give our free and voluntary assent to the foregoing treaty as amended by the resolution of the Senate of the United States on the eleventh day of June 1838, and to our contract therewith, the same having been submitted to us by Ransom H. Gillet, a Commissioner on the part of the United States, and fully and fairly explained by him, to our said tribe, in council assembled.

Dated Buffalo Creek September 28 1838.

Captain Pollard,
Captain Strong,
White Seneca,
Blue Eyes,
George Bennett,
Job Pierce,
Tommy Jimmy,
William Johnson,
Reuben Pierce,
Morris Halftown,
Levi Halftown,
George Big Deer,
Jim Jonas,
George Jameson,
Thomas Jameson,
George Fox,

N. T. Strong,
Thompson S. Harris,
Samuel Gordon,
Jacob Jameson,
John Gordon,
Tall Peter,
Billy Shanks,
James Stevenson,
Walter Thompson,
John Bennett,
John Seneca,
John General,
Major Jack Berry,
John Tall Chief,
Jabez Stevenson.

(To the Indian names are subjoined marks.)

The above signatures were freely and voluntarily given after the treaty and amendments had been fully and fairly explained in open council.

R. H. Gillet, Commissioner.

Witness:

H. A. S. Dearborn, Superintendent of
Massachusetts.
James Stryker, U. S. Agent.
Little Johnson,
Samuel Wilson,
John Buck,
William Cass,

Long John,
Sky Carrier,
Charles Greybeard,
John Hutchinson,
Charles F. Pierce,
John Snow.

(To the Indian names are subjoined marks.)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

Rochelle Krieger, being duly sworn, deposes and says that deponent is not a party to the action, is over eighteen years of age, and resides at 268 West 77th Street, New York, New York 10024;

That on the fifth day of August, 1974, deponent served three (3) copies of the Brief for Appellant and one (1) copy of the Appendix upon BRIAN MUMFORD, ESQ., attorney for appellee in this action, at U. S. Post Office and Courthouse, Albany, New York, the address designated by said attorney for that purpose, by depositing true copies of the same in a postpaid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York.

Rochelle Krieger
Rochelle Krieger

Sworn to before me this
fifth day of August, 1974.

Maria G. Burns
Notary Public

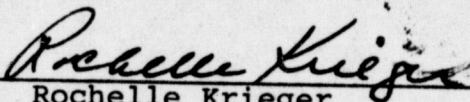
MARIE A. BURNS
NOTARY PUBLIC, State of New York
No. 31-5530085
Qualified in New York County
Commission Expires March 30, 1976

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Rochelle Krieger

Sworn to before me this
fifth day of August, 1974.


Notary Public

MARIE A. BURNS
NOTARY PUBLIC, State of New York
No. 31-5533985
Qualified in New York County
Commission Expires March 30, 1976

